

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Michael Mahaney,

Plaintiff,

vs.

Condair, Inc.,

Defendant.

COURT FILE NO. 0:20-CV- 1928

**DEFENDANT'S
NOTICE OF REMOVAL**

TO: THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
MINNESOTA

Pursuant to 28 U.S.C. §§ 1331, 1332, 1441, and 1446, Defendant Condair, Inc. (“Defendant”) hereby gives notice of removal of the above-captioned action currently pending in the Scott County District Court, State of Minnesota, to the United States District Court for the District of Minnesota. In support of its Notice of Removal, Defendant states as follows:

1. On or about August 11, 2020, Plaintiff, Michael Mahaney, (“Plaintiff”) commenced a civil action against Condair, Inc. in the Scott County District Court in the State of Minnesota, by service pursuant to Minnesota Rule of Civil Procedure 3.01(a). A true and correct copy of the Summons and Complaint is attached as **Exhibit A** to the Declaration of Jessica J. Bradley.

2. In his Complaint, Plaintiff claims that Defendant violated certain provisions of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, and also seeks relief for discrimination under Minn. Stat. § 363A.08 and breach of contract under common law.

3. ***Federal Question Jurisdiction Basis for Removal:*** Accordingly, because it presents federal questions for adjudication, the above-entitled action may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. §§ 1331, 1441, and 1446.

4. ***Diversity Jurisdiction Basis for Removal:*** Moreover, this case is a civil action over which the Court has original jurisdiction under 28 U.S.C. § 1332 and is one that Defendant may remove to the Court pursuant to 28 U.S.C. §§ 1441 and 1446, in that Plaintiff in this action is diverse in citizenship from Defendant, and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs, as set forth in more detail below.

5. ***Supplemental Jurisdiction:*** Additionally, to the extent Plaintiff has asserted state law claims, this Court has supplemental jurisdiction over such claims pursuant to 28 U.S.C. § 1367(a) because those claims are so related to the claims over which this Court has original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

6. ***Citizenship of Parties:*** As the Complaint confirms, Plaintiff resides in the State of Minnesota and is the sole identified plaintiff in this action. (*See* Exhibit A, ¶1.) On that basis, there is no dispute that Plaintiff is a resident and citizen of the State of Minnesota.

7. Defendant is the sole identified defendant in this action. Pursuant to 28 U.S.C. § 1332(c)(1), Defendant is deemed to be a citizen of the state by which it was formed and the state where its principal place of business is located.

8. At the time of the commencement of this action and all times relevant hereto, Defendant was and is a business entity incorporated in the state of Delaware and has its principal place of business at 2700 90th Street, Sturtevant, WI 53177. (See Exhibits A, ¶2, and B (O'Connor Decl.) ¶3.) Plaintiff is, therefore, diverse in citizenship from Defendant so as to vest removal jurisdiction in this Court.

9. ***Amount in Controversy:*** This is a civil action wherein the amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.00. Plaintiff expressly alleges that for Counts I and II of this Complaint, he has been “damaged ... in an amount in excess of \$50,000, to be determined with certainty at trial.” (See Exhibit A, ¶59, 63.) Further, Count III of his Complaint alleges that he “has suffered lost salary benefits, mental and emotional pain, and other compensatory damages in an amount in excess of \$50,000, to be determined with certainty at trial.” (See Exhibit A, ¶68.) Plaintiff further demands judgment including “his costs, attorneys’ fees, and other penalties available by law, including liquidated damages under the FLSA, plus back-pay, front pay, and pre and post judgment interest.” (See Exhibit A, ¶ 15) To determine whether a fact finder might legally conclude that the amount in controversy is greater than \$75,000, a court may consider total compensatory damages, treble damages, punitive damages, and attorney’s fees. *Allison v. Sec. Ben. Life Ins. Co.*, 980 F.2d 1213, 1215 (8th Cir. 1992) (punitive damages); *Zunamon v. Brown*, 418 F.2d 883, 887 n.5 (8th Cir. 1969) (treble damages); *Crawford v. F. Hoffman La Roche*, 267 F.3d 760, 766 (8th Cir. 2001) (citing *Mo. State Life Ins. Co. v. Jones*, 290 U.S. 199, 202 (1933)) (attorney’s fees). Taking Plaintiff’s damages claims together, this is the type of case wherein the

damages sought routinely exceed \$75,000, such that Defendant may remove this action. *Kopp v. Kopp*, 280 F.3d 883, 885 (8th Cir. 2002) (“The district court has subject matter jurisdiction in a diversity case when a fact finder could legally conclude, from the pleadings and proof adduced to the court before trial, that the damages that the plaintiff suffered are greater than \$75,000.”). These aggregate damages amount to a claim for over \$75,000 and thus, exceed the requisite amount in controversy.

10. ***Venue:*** Because the District Court of Scott County, Minnesota, lies in the District of Minnesota, this Court is the appropriate venue for removal. *See* 28 U.S.C. §§ 103, 1441(a). Defendant reserves the right, however, to move for a transfer of venue under 28 U.S.C. § 1404(a) as its continuing investigation of Plaintiff’s claims may warrant.

11. ***Timing of Removal:*** The removal is within thirty (30) days from August 11, 2020, when Plaintiff first served Defendant with the Complaint. *See* 28 U.S.C. § 1446(b).

12. Simultaneous with the filing of this Notice of Removal, Defendant has notified the Scott County District Court in the State of Minnesota of removal of this action. No other process, pleadings, or orders have been served or filed in this action.

13. True and correct copies of the Notice of Removal (with accompanying Exhibits) and the Notice of Filing of Notice of Removal directed to State Court will be served upon Plaintiff’s counsel and filed with the Court Administrator of the Scott County District Court in the State of Minnesota on this date, in accordance with the provisions of 28 U.S.C. § 1446(d).

WHEREFORE, Defendant respectfully requests that this action, now pending in the District Court for the County of Scott, Minnesota, be removed to the United States District Court for the District of Minnesota.

Date: September 10, 2020

s/ Jessica J. Bradley

Jessica J. Bradley (#0392447)

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